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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-858

ALFREDO GONZALEZ, individually and on behalf of all others similarly situated,

Appellant,

vs.

AUTOMATIC EMPLOYEES CREDIT UNION, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

APPENDIX

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

March 16, 1972
Plaintiff's Complaint.

April 10, 1972
Motion of Defendant Secretary to Dismiss.

April 10, 1972
Motion of Defendant Automatic Employees to Strike.

April 14, 1972
Memorandum of Defendant Secretary in Support of Motion to Dismiss.

April 17, 1972
Memorandum of Defendant Automatic Employees in Support of Motion to Strike.

April 19, 1972
Motion of Plaintiff to Convene a Three Judge Court.

May 17, 1972
Memorandum of Plaintiff in Support of Motion to Convene a Three Judge Court and in opposition to Defendants' Motions to Dismiss.

May 26, 1972
Defendant Secretary's Reply Memorandum in support of Motion to Strike and Dismiss.

May 26, 1972
Defendant Automatic's Reply to Memorandum of Plaintiff.

Relevant Docket Entries

June 21, 1972
Supplemental Memorandum of Plaintiff in Opposition to Motions to Dismiss.

June 21, 1972
Motion of Plaintiff for Temporary Restraining Order.

June 23, 1972
Memorandum of Plaintiff in Support of Temporary Restraining Order.

June 23, 1972
Memorandum of Defendant Secretary in Opposition to Temporary Restraining Order.

June 23, 1972
Motion of Ford Motor Credit Company for Leave to Intervene as Amicus Curiae and to File a Brief.

June 23, 1972
Memorandum of Ford Motor Credit Company in Opposition to Temporary Restraining Order.

June 23, 1972
Reply Memorandum of Defendant Automatic Employees to Plaintiff's Supplemental Memorandum in Opposition to Defendant's Motion to Dismiss.

June 27, 1972
Order granting leave to Ford Motor Credit Company to Intervene as Amicus Curiae and File Brief in Support thereof.

June 30, 1972
Memorandum of Plaintiff in Support of Plaintiff's Proposed Temporary Restraining Order.

Relevant Docket Entries

July 3, 1972
Suggestions of Defendant Lewis in Opposition to Entry of Temporary Restraining Order.

July 6, 1972
Motion of Amicus Ford Motor Credit Company in Opposition to Entry of Temporary Restraining Order.

July 7, 1972
Motion of Plaintiff to Proceed as a Class Action in Count II.

July 7, 1972
Motion of Illinois Bankers Association to Appear as Amicus Curiae.

July 7, 1972
Order granting Plaintiff's Motion to Convene a Three Judge Court.

July 7, 1972
Order granting leave to Illinois Bankers Association to Intervene as Amicus Curiae and to File Brief.

July 7, 1972
Order denying Plaintiff's Motion for Temporary Restraining Order and denying Plaintiff's Motion requiring Defendants to File Answer to Complaint.

July 7, 1972
Order taking Plaintiff's Motion to Proceed as a Class Action under advisement and setting briefing schedule.

July 14, 1972
Designation of Three Judge Court.

August 16, 1972
Reply Memorandum of Defendant Secretary to Plaintiff's Supplemental Memorandum in Opposition to Defendant's Motion to Dismiss.

Relevant Docket Entries

August 18, 1972
Memorandum of Plaintiff in Support of Motion to Proceed as a Class Action.

August 28, 1972
Memorandum of Defendant Secretary in Opposition to Plaintiff's Motion to Proceed as a Class Action.

September 15, 1972
Motion of Amici Curiae, Ford Motor Credit Company and Illinois Bankers Association to Take Discovery.

September 15, 1972
Order taking Motion of Amici Curiae under advisement.

September 28, 1972
Plaintiff's Amended Complaint adding additional parties Plaintiff and Defendant.

October 17, 1972
Motion of Plaintiff Banks for Temporary Restraining Order against Defendant Wood Acceptance Corp.

October 24, 1972
Motion of Defendant Wood for Summary Judgment.

November 14, 1972
Motion of Defendant Automatic Employees to permit Motion to Strike filed as to original complaint stand as Motion to Strike as to the Amended Complaint.

November 14, 1972
Order granting above Motion.

November 14, 1972
Motion of Plaintiff's to Proceed as a Plaintiffs and Defendants Class Action in Count I.

November 20, 1972
Answer of Defendant Mercantile National Bank.

Relevant Docket Entries

November 22, 1972
Memorandum of Illinois Bankers Association in Opposition to Plaintiff's Motion to Proceed as a Class Action With Respect to Count II.

December 4, 1972
Memorandum of Defendant Wood Acceptance in Support of Motion for Summary Judgment.

December 5, 1972
Memorandum of Plaintiff's in Support of Motion to Proceed as a Plaintiffs and Defendants Class Action in Count I.

December 15, 1972
Motion of Defendant Secretary for Summary Judgment.

January 2, 1973
Joint Memorandum of all Creditor Defendants in Opposition to Motion to Proceed as a Plaintiffs and Defendants Class Action in Count I.

January 2, 1973
Memorandum of Illinois Bankers Association in Opposition to Plaintiff's Motion to Proceed as a Class Action in Court I.

January 9, 1973
Memorandum of Defendant Secretary in Support of Amended Motion to Dismiss or in the Alternative Motion for Summary Judgment.

January 26, 1973
Memorandum of Plaintiff in Opposition to Defendant Secretary's Motion for Summary Judgment.

January 26, 1973
Reply Memorandum of Plaintiff in Support of Motion for Count I to Proceed as a Class Action and in Opposition to Defendant Wood Acceptance's Motion for Summary Judgment.

January 26, 1973
Reply Memorandum of Wood Acceptance to Plaintiff Bank's Memorandum in Opposition to Wood's Motion for Summary Judgment.

March 1, 1973
Stipulation to Dismiss Counts III and VI.

March 1, 1973
Supplemental Memorandum of All Defendants in Opposition to Motion to Proceed as a Class Action in Count I.

March 8, 1973
Reply Brief of Defendant Secretary in Support of Motion to Dismiss or in Alternative for Summary Judgment.

August 16, 1973
Order of Three Judge Court pursuant to Memorandum opinion dismissing the Amended Complaint.

October 4, 1973
Notice of Appeal to the Supreme Court of the United States.

December 28, 1973
Stipulation between Plaintiff Gonzalez and Defendant Mercantile National Bank Re: monetary damages in Count IV.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HERMOGENES MOJICA, individually and on behalf of all others similarly situated

Plaintiff

vs.

AUTOMATIC EMPLOYERS CREDIT UNION, an Illinois Corporation, and JOHN W. LEWIS, Secretary of State

Defendants

No. 72 C 686

COMPLAINT
(Filed March 16, 1972)

Now comes the plaintiff, Hermogenes Mojica, by his attorneys James O. Latturner and Michael Fitch, and complains against the defendants as follows:

COUNT I

1. Plaintiff seeks to have this Court declare that Illinois Revised Statutes, Ch. 26 §§ 9-503 and 9-504 are invalid and unconstitutional insofar as these sections permit and authorize the repossession and subsequent sale of a debtor's property upon the alleged default of a security agreement without any prior notice or opportunity to be heard and to temporarily, preliminarily and permanently enjoin the defendant Credit Union from repossessing or selling articles pursuant to the authority of these sections on the grounds that these procedures deprive such alleged debtors of the due process and equal

protection of the laws guaranteed by the Fifth and Fourteenth Amendments and constitutes an unreasonable seizure prohibited by the Fourth Amendment to the Constitution of the United States.

2. The jurisdiction of this Court is invoked under Title 28 U.S.C. Sec. 1343 (3) and (4) and Title 42 U.S.C. Sec. 1983. This cause of action is also properly within the ancillary jurisdiction of this Court.

3. Plaintiff, Hermogenes Mojica is a citizen of the United States and a resident of Chicago, Illinois.

4. The defendant Automatic Employees Credit Union, is an Illinois Corporation engaged in the business of making loans and consumer financing under secured transactions with its principal place of business in Northlake, Illinois.

5. On December 1, 1971, plaintiff purchased a used 1970 Chevrolet for $3,464.00, excluding insurance.

6. On or slightly before December 1, 1971, plaintiff borrowed $3,100.00 from the defendant Credit Union and gave said defendant a security interest in said 1970 Chevrolet, pursuant to a security agreement.

7. Under the terms of the loan and security agreement, plaintiff was to pay the defendant Credit Union $30.00 per week until the loan plus interest was paid.

8. Beginning December 3, 1971, plaintiff paid defendant Credit Union $30.00 each and every week to and including March 3, 1972.

9. The plaintiff had not missed nor been late on making any weekly payments and the last payment was made on March 3, 1972.

10. The automobile was repossessed by the defendant Credit Union on March 6, 1972, pursuant to Ill. Rev. Stats. Ch. 26 Sec. 9-503, which provides in part:

> "Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. . . ."

11. The defendant is authorized pursuant to Ill. Rev. Stats. Ch. 26 Sec. 9-504, to sell plaintiff's automobile. Said statute provides in part as follows:

> "(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. . . ."
>
> (4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value of all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this party or of any judicial proceedings.
>
> (a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or
>
> (b) in any other case, if the purchaser acts in good faith. . . ."

12. At all times relevant herein the defendant was acting under color of the laws of the State of Illinois and injuring plaintiff and depriving plaintiff of the rights, privileges and immunities secured to the plaintiff by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

13. Ill. Rev. Stats. Ch. 26 Sec. 9-503 and 9-504 are contrary to and violate the Constitution of the United States in that:

(a) said statutes establish and authorize a procedure which permits the taking of property without prior notice and an opportunity to be heard in violation of due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States;

(b) the effect of said statutes is that secured creditors need not resort to the State Court system to compel performance, but may instead resort to a concept of self-help. Debtors under the same contracts on the other hand, are required to resort to the judicial process to compel performance of the same contract or recover damages for breach thereof. Thus, these statutes deny debtors the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States; and

(c) the action of the defendant constitutes an unreasonable seizure of plaintiff's property as prohibited by the Fourth Amendment of the Constitution of the United States.

14. Unless relief is granted, plaintiff will suffer irreparable harm.

Wherefore, plaintiff respectfully prays that this Honorable Court.

1. Declare that Ill. Rev. Stats. Ch. 26 Sec. 9-503 and 9-504 are invalid and unconstitutional on their face and as applied for the reasons that they violate the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

2. Enter temporary, preliminary and permanent injunctions enjoining defendant, its agent, employees, and

assignees, and all other persons in active concert and participation with it from repossessing or selling articles pursuant to the authority of these sections on the grounds that these procedures deprive the plaintiff of the rights guaranteed by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

3. Grant plaintiff his costs in this action and such other and further relief as the Court shall deem just.

COUNT II

1. Plaintiff, Hermogenes Mojica, individually and on behalf of all others similarly situated seeks to have this Court declare invalid and enjoin the enforcement of Ill. Rev. Stat. Ch. 95½, Sec. 3-114 (b), 3-116 (b) and 3-612 insofar as these statutes of state wide application permit, authorize and compel the Secretary of State to transfer title and issue a new certificate of title to a transferee after an involuntary repossession and to issue special repossessor plates to those in the business of repossessing automobiles. Said statutes deprive debtors allegedly in default of the due process and equal protection of the law guaranteed by the Fifth and Foureeenth Amendments to the Constitution of the United States.

2. Jurisdiction is based upon Title 28, U.S.C. Sec. 1331, 1343 (3) and (4). Jurisdiction is further conferred on this Court by Title 28, U.S.C. Sec. 2201, 2202, 2281, 2284, and 42 U.S.C. Sec. 1983.

3. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. Sec. 2281 and 2284 since plaintiff seeks an injunction to restrain defendant, Secretary of State, from the enforcement, operation and execution of statutes of statewide applicability, on the ground that said statutes are contrary to the Fifth and

Fourteenth Amendments to the Constitution of the United States.

4. The named plaintiff, Hermogenes Mojica is a citizen of the United States and a resident of Chicago, Illinois.

5. The plaintiff brings this class action on his own behalf, and on behalf of all other persons similarly situated pursuant to Rule 23 (a) and (b) of the Federal Rules of Civil Procedure. The class is composed of all persons who have had their automobiles or other motor vehicles repossessed for an alleged default, without prior notice, or an opportunity to be heard. This class is so numerous that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of the representative party are typical of the claims of the class; and the representative party will thoroughly and adequately protect the interests of the class. In addition, the defendant Secretary and his agents acted and refused to act on grounds generally applicable to the class, thereby making appropriate declaratory and injunctive relief with respect to the class as a whole.

6. Defendant John W. Lewis, is the duly appointed Secretary of State and is charged with state-wide administration of the Illinois Vehicle Code, specifically including transfer of title and registration of motor vehicles.

7-17. Plaintiff incorporates and realleges paragraphs 4 through 13 as paragraphs 7 through 17 of this Count II.

18. Ill. Rev. Stats. Ch. 95½ Sec. 3-114 (b) and 3-116 (b) authorize and compel the defendant Secretary to transfer title and issue a new certificate to a transferee after an involuntary repossession. Said statutes provide:

3-114 Transfer by operation of law:

(b) If the interest of the owner is terminated or the vehicle is sold under a security agreement by a lienholder named in the certificate of title, the transferee shall promptly mail or deliver within fifteen (15) days to the Secretary of State the last certificate of title, his application for a new certificate in the form the Secretary of state prescribes, and an affidavit made by or on behalf of the lienholder that the vehicle was repossessed and that the interest of the owner was lawfully terminated or sold pursuant to the terms of the security agreement. If the lienholder succeeds to the interest of the owner and holds the vehicle for resale, he must secure a new certificate of title and upon transfer to another person, shall deliver to the transferee the properly assigned certificate.

§ 3-116 When Secretary of State to issue a new certificate

(b) The Secretary of State, upon receipt of an application for a new certificate of title by a transferee other than by voluntary transfer, with proof of the transfer, the required fee and any other documents required by law, shall issue a new certificate of title in the name of the transferee as owner. If the outstanding certificate of title is not delivered to him, Secretary of State shall make demand therefor from the holder thereof.

19. Ill. Rev. Stats., Ch. 95½ Sec. 3-612 authorizes the defendant Secretary to issue special repossessor plates to those in the business of repossessing automobiles under the Illinois Commercial Code. Said Statute provides:

§ 3-612 Repossessor Plates

The Secretary, upon receipt of an application, made on the form prescribed by the Secretary of State may issue to financial institutions, to lending institutions and to persons engaged in the business of repossessing motor vehicles for others in situations where the motor vehicle is the security for the funds, special plates which may be used by such financial institu-

tions, lending institutions and repossessors solely for the purpose of operating the motor vehicles which are repossessed by such repossessors upon a default in the contract. . . .

20. Ill. Rev. Stats. Ch. 95½ Sec. 3-114 (b), 3-116 (b) and §3-612 are contrary to and violate the Constitution of the United States in that:

(a) said statutes establish and authorize a procedure which permits the taking of property without prior notice and an opportunity to be heard in violation of due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

(b) the effect of said statutes is that secured creditors need not resort to the State Court system to compel performance, but may instead resort to a concept of self-help. Debtors under the same contracts on the other hand, are required to resort to the judicial process to compel performance of the same contract or recover damages for breach thereof. Thus these statutes deny debtor's the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States.

21. Unless relief is granted, plaintiff will suffer irreparable harm.

Wherefore, plaintiff respectfully prays, on behalf of himself and all others similarly situated, that this Honorable Court:

1. Convene a three-judge District Court pursuant to 28 U.S.C. Sec. 2281 and 2284 to hear and determine this controversy.

2. Determine by order, pursuant to Rule 23 (c) (1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action.

3. Declare that Ill. Rev. Stat. Ch. 26, Sec. 9-503 and 9-504 and Ch. 95½ Sec. 3-114 (b) 3-116 (b) and 3-612 are invalid and unconstitutional on their face and as applied for the reasons that they violate the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

4. Enter preliminary and permanent injunctions, enjoining defendant, Secretary, his successors in office, agents and employees, and all other persons in active concert and participation with him from transfering title and issuing a new certificate of title to a transferee after an involuntary repossession and from issuing special repossession plates to those in the business of repossessing motor vehicles pursuant to the authority of these statutes on the grounds that said procedures deprive the plaintiff of the rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

5. Pursuant to Rule 54 (d) of the Federal Rules of Civil Procedure, allow plaintiffs their costs herein, and also grant them and all persons similarly situated such additional or alternative relief as may seem to this Court to be just, proper and equitable.

• • •

James O. Latturner
1105 E. 63rd Street
Chicago, Illinois 60637
955-6300

Michael Fitch
2029 W. North Avenue
Chicago, Illinois 60647
489-6800

/s/ *James O. Latturner*
James O. Latturner

/s/ *Michael Fitch*
Michael Fitch
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption Omitted in Printing]

MOTION FOR TEMPORARY RESTRAINING ORDER
(Filed June 21, 1972)

Now comes the plaintiff, Hermogenes Mojica by his attorney, James O. Latturner and respectfully moves this court to enter a temporary restraining order, restraining the defendant John W. Lewis, Secretary of State, his successors, agents and employees, pending the final hearing and determination of this cause, from transfering title and issuing a new certificate of title to a transferee after an involuntary repossession of an automobile until such time as the owner debtor has been given a hearing before an impartial and neutral trier of fact as to the right of the creditor to repossess and sell the automobile and of the Secretary of State to transfer title and issue a new certificate of title for the following reasons:

1. The grounds of this Motion as more fully set forth in plaintiff's verified complaint are:

(a) The probability of plaintiff prevailing upon final hearing of this cause is great in light of *Fuentes* v. *Shevin*, ... U.S. ..... (June 12, 1972).

(b) Plaintiff class will suffer immediate and irreparable injury, and loss of property.

(c) The issuance of a temporary restraining order will not cause undue inconvenience or loss to the defendant, but will prevent irreparable injury to the plaintiffs.

(d) The Statutes in question are in violation of the rights, privileges and immunities secured to plaintiff by

the Fourteenth Amendment to the United States Constitution.

(e) Plaintiffs have no adequate remedy at law.

2. The affidavit of Hermogenes Mojica in support of this motion is attached hereto.

3. Said irreparable injury to plaintiff class will continue day after day unless the defendant Secretary is restrained from committing the above described acts which injure the plaintiffs until a three judge court can be convened to hear plaintiff's motion for a preliminary injunction.

/s/ James O. Latturner
Attorney for Plaintiff

AFFIDAVIT

Hermogenes Mojica, being first duly sworn deposes and says:

1. I am the plaintiff in the above captioned case, have knowledge of the facts contained herein and could testify competently thereto if called as a witness in court.

2. On March 6, 1972 my automobile was repossessed by Automatic Employees Credit Union.

3. At the time of repossession I had not missed nor been late in making any of my weekly payments and my last payment had been made on March 3, 1972.

4. I was not given any notice or hearing or opportunity for a hearing prior to the repossession by the Credit Union and transfer of my title by the Secretary of State.

5. If I had been given a due process hearing, the probability of my prevailing would have been great.

6. Just prior to the repossession I had been laid off my job at Automatic Electric Company in Northlake, Illinois.

7. Shortly after the repossession, I was notified by Automatic Electric that there was a job available on the work shift that begins at midnight.

8. At that time I resided at 1235 N. Damen, Chicago, Illinois.

9. There is no public transportation from my residence area to Automatic Electric in Northlake, Illinois, at said time of night.

10. As a result of the repossession of my automobile, I was unable to accept the job at Automatic Electric.

11. I have been unable to find another job and I am still unemployed.

/s/ Hermogenes Mojica
Hermogenes Mojica

(Jurat and Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
[Caption Omitted in Printing]

SUGGESTIONS IN OPPOSITION TO ENTRY OF TEMPORARY RESTRAINING ORDER
(Filed July 3, 1972)

Defendant, John W. Lewis, Secretary of State, by his attorney William J. Scott, Attorney General of the State of Illinois, files this his Suggestions in Opposition to Entry of Temporary Restraining Order:

1. The entry of an order restricting the Secretary of State in issuance of repossession titles will have a substantial impact upon creditor institutions engaged in auto financing. However, this Defendant is not a representative of the special interests of that class of creditors, and will restrict his comments solely to concerns of the Office of Secretary of State.

2. The Secretary of State is charged with the responsibility of administering the Illinois Vehicle Code, including the provisions of Chap. 95½, §3-114 Ill. Rev. Stats. This Defendant is therefore concerned with satisfying the express requirements of the statute, and defending the validity of State law.

3. For the reasons heretofore presented to the Court, this Defendant challenges the jurisdiction of the Court to hear and decide the issue presented, or to issue a Temporary Restraining Order directed to this Defendant.

4. However, it is proposed that the Secretary of State, in lieu of the entry of any Temporary Restraining Order and to avoid the obligation to appeal such an order, will without delay adopt and promulgate new rules and regulations governing procedures for the transfer of title by operation of law under §3-114 of the Illinois Vehicle Code, which shall provide:

A. The application for a new certificate shall also include an affidavit made by or on behalf of the lienholder that (1) the debtor-owner was mailed notice of the potential application to transfer title by certified mail, return receipt requested, at least 15 days prior to the application, and informed of his right to file an affidavit of defense with the lienholder contesting that his interest was lawfully terminated or sold pursuant to the terms of the

security agreement; and (2) the lienholder has not received an affidavit of defense.

B. The application for a new certificate shall be returned by the Secretary of State without action (1) if the required affidavit is not supplied, or (2) if an affidavit of defense has been received by the lienholder, unless the application also contains a certified copy of an order by any court of competent jurisdiction, except a judgment by confession, declaring the creditor is entitled to possession and title of the automobile.

5. Adoption of these rules and regulations in lieu of the entry of any Temporary Restraining Order will accomplish the same equitable result desired, but not generate an unnecessary conflict between branches of government.

Respectfully submitted,

/s/ *William J. Scott*
William J. Scott
Attorney General of Illinois
160 North LaSalle Street
Chicago, Illinois 60601

Herbert L. Caplan
Assistant Attorney General
(Of Counsel)

793-2528

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
[Caption Omitted in Printing]

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable Richard B. Austin, one of the Judges of said Court in his courtroom in the United States Courthouse, Chicago, Illinois, on Friday, July 7, 1972 at 11:00 o'clock a.m.

• • •

9 The Court: And in regard to this promulgation of a regulation, or whatever you are going to call it—

Mr. Kaplan: Excuse me, could I clarify that? Perhaps I inadvertently used the wrong language.

I am informed by Mr. Collins, legal advisor to the Secretary of State's Office, that presently they have not actually had promulgated rules in the sense of conducting hearings and filing a rule with the Secretary of State in accordance with the rule-making procedures. They do have office policy which presently governs the form of application and affidavit that they use.

What I should have said was that that office policy, which now governs the form, would be altered, and all creditors would be informed of the change in policy, so that there would not be a formally promulgated rule in the sense of a rule-making procedure, but there would be the same rule that governs the present processing of applications.

The Court: What would you call it, a regulation, a rule, or just a piece of paper, or what?

10 Mr. Kaplan: Your Honor, this is Mr. Collins.

Mr. Collins: Just an administrative policy, your Honor.

• • •

Motion to Proceed as a Class Action

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption Omitted in Printing]

MOTION TO PROCEED AS A CLASS ACTION

(Filed July 7, 1972)

Now comes the plaintiff, Hermogenes Mojica, by his attorney, James O. Latturner, pursuant to Rule 23 (c)(1) of the Federal Rules of Civil Procedure and respectfully moves this Court to determine that Count II may properly proceed as a class action pursuant to Rule 23 (a) and (b) because the class, consisting of all persons who have had or will have their automobiles or other motor vehicle repossessed for an alleged default without prior notice or an opportunity to be heard and whose certificate of title will be terminated and transfered by the Secretary of State, is so numerous that joinder of all members is impractical; there are no questions of law and fact common to the class; the claims of the representative party will thoroughly and adequately protect the interests of the class. In addition, the defendant Secretary and his agents have acted and refused to act on grounds generally applicable to the class, thereby making appropriate declaratory and injunctive relief with respect to the class as a whole.

/s/ *James O. Latturner*
Attorney for Plaintiff

(Certificate of Service omitted in printing)

Amended Complaint

ORDER

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Name of Presiding Judge, Honorable Richard B. Austin

Cause No. 72 C 686 Date July 7, 1972

Title of Cause—Mojica v. Automatic Employees Credit Union et al

Plaintiff's motion to convene a three-judge court pursuant to 28 U.S.C. Sections 2281 and 2284 is granted.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Hermogenes Mojica, Alberto Gonzalez, James Barnett and Compton C. Banks, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

Automatic Employees Credit Union, Mercantile National Bank Of Chicago, Car Credit Corp., Overland Bond & Investment Corp. and Wood Acceptance Corp., individually and as representatives of all others similarly situated, and John W. Lewis, Secretary of State,

Defendants.

NO. 72 C 686

AMENDED COMPLAINT

(Filed September 28, 1972)

Now come the plaintiffs, Hermogenes Mojica and Alberto Gonzalez, by their attorneys, James O. Latturner

and Allen R. Kamp, and the plaintiffs, James Barnett and Compton C. Banks, by their attorney, William J. McNally, and complain against the defendants as follows:

COUNT I

1. Plaintiffs seek to have this Court declare that Illinois Revised Statutes, Ch. 26 §§9-503 and 9-504 are invalid and unconstitutional insofar as these sections permit and authorize the repossession and subsequent sale of a debtor's property upon the alleged default of a security agreement without any prior notice or opportunity to be heard and to temporarily, preliminarily and permanently enjoin the defendants and the defendant class from repossessing or selling articles pursuant to the authority of these sections on the grounds that these procedures deprive such alleged debtors of the due process and equal protection of the laws guaranteed by the Fifth and Fourteenth Amendments and constitute an unreasonable seizure prohibited by the Fourth Amendment to the Constitution of the United States.

2. The jurisdiction of this Court is invoked under Title 28 U.S.C. Sec. 1343(3) and (4) and Title 42 U.S.C. Sec. 1983. This cause of action is also properly within the ancillary jurisdiction of this Court.

3. The plaintiffs bring this class action on their own behalf, and on behalf of all other persons similarly situated pursuant to Rules 23(b)(1)(A) and 23(b)(2) of the Federal Rules of Civil Procedure. The class is composed of all persons who are debtors under security agreements involving motor vehicles and who have had or may have their automobiles or other motor vehicles repossessed for an alleged default, without prior notice or an opportunity to be heard. This class is so numerous that joinder of all

members is impracticable; there are questions of law or fact common to the class; the claims of the representative parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the class. The prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; and the parties opposing the class have acted or referred to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

4. Defendants Automatic Employees Credit Union, Mercantile National Bank of Chicago, Wood Acceptance Company and Overland Bond & Investment Corp. are sued individually and as representatives of all other similarly situated, pursuant to Rule 23(b)(1)(A) of the Federal Rules of Civil Procedure. The class is composed of all persons who are secured parties within the meaning of Ill. Rev. Stats. ch. 26, §9-105(i) and who may, upon their unilateral determination of default by debtor-obligees, seek to recover possession and dispose of the collateral governed by such security agreements pursuant to and under color of Illinois Revised Statutes ch. 26, §9-503 and 4. Said class is so numerous that joinder of all members is impracticable, there are questions of law or fact common to the class, the defenses of the representative parties are typical of the defenses of the class, and the representatives parties will fairly and adequately protect the interests of the class. Further, the prosecution of separate actions against the class would create a

risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class.

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ALLEGATIONS PERTAINING TO PLAINTIFF GONZALEZ

13. Plaintiff, Alfredo Gonzalez, is a citizen of the United States and a resident of Chicago, Illinois.

14. Defendant, Mercantile National Bank of Chicago, is engaged in the business of making loans and consumer financing under secured transactions with its principal place of business in Chicago, Illinois.

15. On January 22, 1972, Gonzalez purchased a used 1968 Pontiac from Chicago, Illinois Motor Sales, Inc. pursuant to a retail installment contract. A copy of the retail installment contract and the bill of sale are attached hereto as Exhibits "C" and "D" respectively.

16. The retail installment contract was made on a form supplied and prepared by Mercantile. Chicago, Illinois Motor Sales, Inc. had authority to extend credit to Gonzalez on behalf of Mercantile and assigned the contract to Mercantile on or shortly after January 22, 1972.

17. The amount financed pursuant to the retail installment contract also included physical damage and collision insurance, which was required by the contract as a condition of financing. Said insurance was purhased by Mercantile and was for the benefit of the holder of the contract, Mercantile.

18. The contract provided for Gonzalez to pay fifteen installments of One Hundred Twenty Dollars and Seventy-Eight Cents ($120.78) each beginning on February 28, 1972 and on the same day of each successive month until paid.

19. Gonzalez paid the February 28, 1972 installment.

20. On March 26, 1972 and April 16, 1972, Gonzalez was involved in accidents covered by the insurance required by the contract. The amount of the claim payable to Mercantile as a result of these accidents was Three Hundred Twenty-Two Dollars and Sixty-Eight Cents ($322.68).

21. On April 18, 1972 the insurance referred to in Paragraph 17 above was cancelled by the insurance company. Pursuant to this cancellation Mercantile received a Two Hundred Twenty-Nine Dollars and Ninety-Four Cents ($229.94) rebate. Said rebate was paid directly to Mercantile by the insurance company.

22. On or about April 25, 1972 said automobile was repossessed by Mercantile pursuant to and under color of Illinois Revised Statutes, Ch. 26, Sec. 9-503, without the knowledge or consent of Gonzalez.

23. At the time of repossession, Mercantile had received an amount in excess of the payments then due and owing on the contract.

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ALLEGATIONS PERTAINING TO ALL PLAINTIFFS

49. Illinois Revised Statutes, Ch. 26, §9-503, pursuant to which plaintiffs' automobiles have been or may be repossessed, provides in part:

> "Unless otherwise agreed a secured party has on default the right to take possession of the collateral.

In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. . . ."

50. Subsequent to repossession, plaintiffs' automobiles have been or may be sold pursuant to Ill. Rev. Stats. Ch. 26 §9-504, which provides in part as follows:

"(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation of processing. . ."

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this party or of any judicial proceedings.

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith. . . "

51. At all times relevant herein the defendants were acting under color of the laws of the State of Illinois and injuring plaintiffs and depriving plaintiffs of the rights, privileges and immunities secured to the plaintiffs by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

52. Ill. Rev. Stats. Ch. 26 Sec. 9-503 and 9-504 are contrary to and violate the Constitution of the United States in that:

(a) said statutes establish and authorize a procedure which permits the taking of property without prior notice and an opportunity to be heard in violation of due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States;

(b) the effect of said statutes is that secured creditors need not resort to the State Court system to compel performance, but may instead resort to a concept of self-help. Debtors under the same contracts on the other hand, are required to resort to the judicial process to compel performance of the same contract or recover damages for breach thereof. Thus, these statutes deny debtors the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States; and

(c) the actions of the defendants constitute an unreasonable seizure of plaintiff's property as prohibited by the Fourth Amendment of the Constitution of the United States.

53. Plaintiffs have no adequate remedy at law and unless relief is granted, plaintiffs will suffer irreparable harm.

Wherefore, plaintiffs respectfully pray, on behalf of themselves and all others similarly situated, that this Honorable Court:

1. Determine by order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action as to both the plaintiff class and defendant class.

2. Declare that Ill. Rev. Stats. Ch. 26 Sec. 9-503 and 9-504 are invalid and unconstitutional on their face and as applied for the reasons that they violate the Fourth,

Fifth and Fourteenth Amendments to the United States Constitution.

3. Enter temporary, preliminary and permanent injunctions enjoining the defendants, and each person in the class of defendants here represented, and their agents, employees and assignees, and all other persons in active concert and participation with them from repossessing or selling articles pursuant to the authority of these sections on the grounds that these procedures deprive the plaintiffs of the rights guaranteed by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

4. Grant plaintiffs their costs in this action and such other and further relief as the Court shall deem just.

COUNT II

1. Plaintiffs individually and on behalf of all others similarly situated seek to have this Court declare invalid and enjoin the enforcement of Ill. Rev. Stat. Ch. 95½, Sec. 3-114(b), 3-116(b) and 3-612 insofar as these statutes of state wide application permit, authorize and compel the Secretary of State to transfer title and issue a new certificate of title to a transferee after an involuntary repossession and to issue special repossessor plates to those in the business of repossessing automobiles. Said statutes deprive debtors allegedly in default of the due process and equal protection of the law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

2. Jurisdiction is based upon Title 28, U.S.C. Sec. 1331, 1343(3) and (4). Jurisdiction is further conferred

on this Court by Title 28, U.S.C. Sec. 2201, 2202, 2281, 2284 and 42 U.S.C. Sec. 1983.

3. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. Sec. 2281 and 2284 since plaintiffs seek an injunction to restrain defendant, Secretary of State, from the enforcement, operation and execution of statutes to statewide applicability, on the ground that said statutes are contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States.

4. The plaintiffs bring this class action on their own behalf, and on behalf of all other persons similarly situated pursuant to Rules 23 (b)(1)(A) and 23 (b)(2) of the Federal Rules of Civil Procedure. The class is composed of all persons who are debtors under security agreements invoking motor vehicles and who have had or may have their automobiles or other motor vehicles repossessed and sold for an alleged default without prior notice and an opportunity to be heard and whose certificate of title has been or will be terminated and transferred by the Secretary of State. This class is so numerous that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class; and the representative parties will fairly and adequately protect the interests of the class. In addition, the defendant Secretary and his agents have acted and refused to act on grounds generally applicable to the class, thereby making appropriate declaratory and injunctive relief with respect to the class as a whole; and the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would

establish incompatible standards of conduct for the party opposing the class.

5. Defendant John W. Lewis, is the duly appointed Secretary of State and is charged with state-wide administration of the Illinois Vehicle Code, specifically including transfer of title and registration of motor vehicles.

6.-54. Plaintiff incorporates and realleges paragraphs 5 through 53 of Count I as paragraphs 6 through 54 of this Count II.

55. Ill. Rev. Stats. Ch. 95½ Sec. 3-114(b) and 3-116(b) authorize and compel the defendant Secretary to transfer title and issue a new certificate to a transferee after an involuntary repossession. Said statutes provide:

3-114 Transfer by operation of law:

(b) If the interest of the owner is terminated or the vehicle is sold under a security agreement by a lienholder named in the certificate of title, the transferee shall promptly mail or deliver within fifteen (15) days to the Secretary of State the last certificate of title, his application for a new certificate in the form the Secretary of State prescribes, and an affidavit made by or on behalf of the lienholder that the vehicle was repossessed and that the interest of the owner was lawfully terminated or sold pursuant to the terms of the security agreement. If the lienholder succeeds to the interest of the owner and holds the vehicle for resale, he must secure a new certificate of title and upon transfer to another person, shall deliver to the transferee the properly assigned certificate.

3-116 When Secretary of State to issue a new certificate

(b) The Secretary of State, upon receipt of an application for a new certificate of title by a transferee other than by voluntary transfer, with proof of the transfer, the required fee and any other documents

required by law, shall issue a new certificate of title in the name of the transferee as owner. If the outstanding certificate of title is not delivered to him, Secretary of State shall make demand therefor from the holder thereof.

56. Ill. Rev. Stats., Ch. 95½ Sec. 3-612 authorizes the defendant Secretary to issue special repossessor plates to those in the business of repossessing automobiles under the Illinois Commercial Code. Said Statute provides:

3-162 Repossessor Plates

The Secretary, upon receipt of an application, made on the form prescribed by the Secretary of State may issue to financial institutions, to lending institutions and to persons engaged in the business of repossessing motor vehicles for others in situations where the motor vehicle is the security for the funds, special plates which may be used by such financial institutions, lending institutions and repossessors solely for the purpose of operating the motor vehicles which are repossessed by such repossessors upon a default in the contract. . .

57. Ill. Rev. Stats. Ch. 95½ Sec. 3-114(b), 3-116(b) and 3-612 and defendant Secretary's enforcement of them are contrary to and violate the Constitution of the United States in that:

(a) said statutes establish and authorize a procedure which permits the taking of properties without prior notice and an opportunity to be heard in violation of due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

(b) the effect of said statutes is that accured creditors need not resort to the State Court system to compel performance, but may instead resort to a concept of self-help. Debtors under the same contracts on the

other hand, are required to resort to the judicial process to compel performance of the same contract or recover damages for breach thereof. Thus these statutes deny debtor's the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States.

Wherefore, plaintiffs respectfully pray, on behalf of themselves and all others similarly situated, that this Honorable Court:

1. Convene a three-judge District Court pursuant to 28 U.S.C. Sec. 2281 and 2284 to hear and determine this controversy.

2. Determine by order, pursuant to Rule 23(c) (1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action.

3. Declare that Ill. Rev. Stats. Ch. 26, Sec. 9-503 and 9-504 and Ch. 95½ Sec. 3-114(b), 3-116(b) and 3-612 are invalid and unconstitutional on their face and as applied for the reasons that they violate the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

4. Enter preliminary and permanent injunctions, enjoining defendant, Secretary, his successors in office, agents and employees, and all other persons in active concert and participation with him from transfering title and issuing a new certificate of title to a transferee after an involuntary repossession and from issuing special repossession plates to those in the business of repossessing motor vehicles pursuant to the authority of these statutes on the grounds that said procedures deprive the plaintiff of the rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

5. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, allow plaintiffs their costs herein, and also grant them and all persons similarly situated such additional or alternative relief as may seem to this Court to be just, proper and equitable.

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COUNT IV

1. Plaintiff Gonzalez seeks in this Count to recover damages for injures sustained and to redress the deprivation, under color of State law, of rights secured to him by the Constitution of the United States.

2. The jurisdiction of this Court is invoked under Title 28 U.S.C. Sec. 1331 and 1343(3) and (4) and Title 42 U.S.C. Sec. 1983. The matter in controversy exceeds, exclusive of interests and costs, the sum of Ten Thousand Dollars ($10,000.00). This cause of action is also properly within the ancillary jurisdiction of this Court.

3-17. Plaintiff incorporates by reference and realleges paragraphs 13-23 and 49-52 of Count I as paragraphs 3-17 of this Count.

18. As a direct and proximate result of defendant Mercantile repossessing plaintiff's personal property in the wrongful manner described above, plaintiff has been damaged by defendant Mercantile in the sum of Fifteen Hundred Dollars ($1,500.00) which is the fair market replacement value of said property.

19. In addition, plaintiff has lost the use of his automobile and as a direct result thereof has suffered great mental and emotional anguish and has suffered the loss

of the use of his property and has been deprived of the rights secured to him under the Constitution of the United States by the defendant Mercantile, who acted with knowledge of the wrongfulness of its acts and with malice.

Wherefore, plaintiff Gonzalez respectfully prays:

1. For judgment in favor and against the defendant Mercantile Union in the sum of Twelve Thousand Dollars ($12,000.00) actual damages and Fifty Thousand Dollars ($50,000.00) punitive damages;

2. Grant plaintiff his costs in this action and such other and further relief as the Court shall deem just.

• • •

/s/ James O. Latturner
/s/ William J. McNally
Attorneys for Plaintiffs

James O. Latturner
Allen R. Kamp
4564 N. Broadway
Chicago, Illinois 60640
769-1015

William J. McNally
53 W. Jackson
Chicago, Illinois 60604
939-5797

(Certificate of Service omitted in printing)

Retail Installment Contract

Form 762 or L 70.8m

Mercantile National Bank of Chicago

No. _____ RETAIL INSTALLMENT CONTRACT 126 15 7702 1811.70
(MOTOR VEHICLE)

Buyer(s) ALFREDO GONZALEZ 822 W CUYLER CHICAGO ILL.
Residence Address City State

Seller CHICAGO, ILLINOIS MOTOR SALES INC. 3939 N WESTERN
Corporate, Firm or Trade Name Business Address City State

Seller hereby sells and Buyer or Buyers, jointly and severally, hereby purchase the following motor vehicle with accessories and equipment thereon for the deferred payment price and on the terms set forth in this contract. Buyer acknowledges delivery and acceptance of said motor vehicle in good condition.

New or Used	Year	Make of Vehicle	Model	Body Style	No. Cyl.	Serial No.	Motor No.	Color
USED	68	FORD	FAIRMONT	COUP	8	2236784U141450		GOLD

Extra Equipment (Check)

☒ Auto Transmission ☐ Overdrive ☒ Power Steering ☐ Power Brakes ☐ Power Seat ☐ Power Windows ☐ Air Conditioner ☒ Radio ☒ Heater ☐ Air Springs ☐ Fuel Injection ☐ Accessory Group No.

DISCLOSURE STATEMENT

1.	Cash Price	$ 1570.00
2.	Cash Down Payment ... $ 400.00	
	Trade-In $ — —	
	Pay-Off $ — —	
	NONE Net —	+ —
	Year Make Body Serial No.	
4.	Total Down Payment	$ 400.00
5.	Unpaid Balance of Cash Price	$ 1170.00
6.	Other Charges:	
	Official Fees	$ —
	Taxes (not included in cash price)	$ —
	License & certificate of title	$ —
	Physical Damage Insurance for term of 12 months Comprehensive	$ 40.00
	Fire and Theft	$ —
	$ 100.00 Deductible Collision	$ 266.00
	Towing and Labor	$ 6.00
	Combined Additional Coverage	$ —
	Other _____	$ —
	Credit Life Insurance	$ 14.72
	Credit Disability (Acc. & Health) Insurance	$ 45.30
7.	Amount Financed—Unpaid Balance	$ 1542.02
8.	FINANCE CHARGE	$ 269.68
9.	Total of Payments	$ 1811.70
10.	Deferred Payment Price (1+6+8)	$ 2211.70
11.	ANNUAL PERCENTAGE RATE	25.04 %

Buyer promises to pay the "TOTAL OF PAYMENTS" shown herein to the holder hereof at MERCANTILE NATIONAL BANK of CHICAGO, a National Banking Association in 15 installments of $ 120.78 each and a final installment of $ 120.78, beginning on February 28 19 72 and continuing on the same day of each successive month thereafter until paid in full.

Finance charge begins to accrue JAN 22 19 72 (If different from date of transaction)

Delinquency charge on each installment in default for a period of not less than 10 days is 5% of the installment or $5, whichever is less. In addition, Buyer is obligated to pay reasonable attorneys' fees incurred by Seller in the collection or enforcement of the debt. In the event of prepayment in full at any time before maturity, the rebate of unearned finance charge is computed on the Rule of 78ths after first deducting an acquisition charge of $25. No rebate of less than $1. No insurance included in this contract unless a charge therefor is shown.

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.

SECURITY INTERESTS: Seller retains and shall have a purchase-money security interest in the motor vehicle described above under the Illinois Uniform Commercial Code until the Total of Payments and all future indebtedness for taxes, liens, repairs and insurance premiums advanced by holder hereunder are paid in full. Holder has the right of set-off or lien on any deposit or sums now or hereafter owed by holder to Buyer.

INSURANCE AGREEMENT

Automobile Physical Damage Insurance is required by Seller. Buyer may choose the person through whom the insurance is to be obtained. If such insurance is to be obtained through Seller, the cost and coverages appear in Item 6 above.

Credit Insurance is not required by Seller nor is it a factor in approval of the extention of credit. No credit insurance is to be provided unless the Buyer signs the appropriate authorization below. Group Credit Insurance is available for the term of the credit at the following costs:

Credit Life Insurance $ 14.72 — I desire Credit Life and Disability Insurance

Credit Disability Insurance $ 45.30 — I desire Credit Life Insurance Only

I DO NOT want Credit Life or Disability Insurance

1-22-72 (Date) Alfredo Gonzalez (Buyer's Signature) (Date) (Buyer's Signature) (Date) (Buyer's Signature)

NOTICE OF PROPOSED GROUP CREDIT LIFE INSURANCE

If a charge is made in Item (6) above for credit life insurance and if such insurance is to be procured by assignee, the undersigned takes notice that decreasing term insurance written under a Group Credit Life Insurance Policy is to be purchased on the life of the Buyer whose signature first appears below, subject to acceptance by the insurer and issuance of a certificate by RESALTA (Insurer) (Home Office Address)

The amount of premium is shown in Item (6) above. The term of insurance will commence on the date of this contract and expire on the originally scheduled maturity date of the indebtedness (but not to exceed 60 months). The initial amount of insurance will be equal to the initial indebtedness or $5,000, whichever is less and will decrease as any payment is made on the indebtedness in an amount computed by multiplying the amount of the payment by the ratio of initial insurance over the initial indebtedness. The proceeds of any insurance paid will be applied to reduce or extinguish the indebtedness. If insurance is terminated prior to the scheduled maturity date of the indebtedness, any premium refund will be paid or credited promptly to the person entitled thereto. Refund formula is on file with the Director of Insurance and with creditor. All of the foregoing is subject to the provisions of the certificate of insurance to be issued. SIGNATURE BELOW

BUYER AGREES THAT THE PROVISIONS ON THE REVERSE SIDE HEREOF SHALL CONSTITUTE A PART OF THIS RETAIL INSTALLMENT CONTRACT AND BE INCORPORATED THEREIN.

NOTICE TO THE BUYER
1. Do not sign this agreement before you read it or if it contains any blank spaces.
2. You are entitled to an exact copy of the agreement you sign.
3. Under the law you have the right, among others, to pay in advance the full amount due and to obtain under certain conditions a partial refund of the finance charge.

Buyer acknowledges receipt of a fully completed copy of this contract executed by both seller and Co-signer, if any, acknowledges receipt of completed copies of this contract and of co-signer statement.

Dated: JANUARY 22 19 72 RETAIL INSTALLMENT CONTRACT

CHICAGO, ILL. MOTOR SALES INC. (Seller) Alfredo Gonzalez (Buyer)

By: _____ Title _____ (Buyer)

ILLINOIS NEGOTIABLE PROMISSORY NOTE

CHICAGO, ILLINOIS JANUARY 22 19 72

For value received, the undersigned jointly and severally promise to pay to the order of CHICAGO, ILL. MOTOR SALES INC. (Seller) ONE THOUSAND EIGHT HUNDRED ELEVEN and 70/100 Dollars ($ 1811.70)

at the office of MERCANTILE NATIONAL BANK of Chicago in installments as follows: 15 installments of $ 120.78 each, the first installment to be paid on the 28TH day of FEBRUARY 19 72, and one installment on the 28TH day of each succeeding month thereafter, until the entire sum is paid, together with interest after maturity at the highest legal rate. If any installment of this note is not paid when due, all installments hereof shall immediately become due and payable at the option of the legal holder hereof without notice or demand.

The undersigned and each of them hereby authorize irrevocably any Attorney at any Court of Record to appear for the undersigned and each or any of them in such Court in term time or vacation at any time hereafter, and confess a judgment without process in favor of the holder hereof, for the amount then due hereon, together with costs of suit and reasonable attorney's fees, and to release and waive all errors that may intervene and consent to immediate execution thereon.

Notwithstanding any provision hereof or of applicable law, holder irrevocably waives and releases all rights to make a judgment confessed herein a lien on any real property now or hereafter owned by the undersigned debtor or in which the undersigned debtor may now or hereafter have an interest.

The endorsers and guarantors herein hereby severally waive presentment for payment, notice of non-payment, protest, and notice of protest, and diligence in bringing suit against any party thereto, and consent that the time of payment may be extended from time to time without notice thereof.

Mail Address 822 W CUYLER (Buyer) Alfredo Gonzalez 126 15 7702 (Buyer) 4/4

Town CHICAGO, Illinois (Buyer)

ORIGINAL

Retail Installment Contract

ADDITIONAL AGREEMENTS OF BUYER

This contract contains all of the agreements of the parties relative to the retail installment sale, and no representations, promises, statements or warranties, express or implied, have been made by Seller unless contained herein. This contract may be assigned by the Seller, and if so assigned, Buyer agrees that he will not set up any claim which he may have against Seller as a defense, counterclaim, set-off or cross-complaint to any action brought by the assignee or holder of this contract, and that he will not assert any such right of action which he may have against Seller by suit against said assignee or holder.

Waiver of any default in the payment of any installment of the total of payments when due shall not operate as a waiver of any subsequent default. No extension of the time of payment or any other modification of the terms of this contract shall be binding on holder unless written consent thereto is given by an executive officer of holder. This contract shall be binding upon and inure to the benefit of the parties, their heirs, personal representatives, successors and assigns.

Buyer agrees to keep said motor vehicle fully insured against loss by fire, theft and collision for the entire term of this contract in companies acceptable to holder. Holder is authorized to purchase all insurance included in this contract. Insurance coverages, other than required insurance, have been voluntarily contracted for by Buyer. Buyer may elect to purchase any required insurance from an insurance company, agent or broker of his own choice. If Buyer so elects, he shall furnish Seller with a policy or binder issued by a company acceptable to Seller on or before taking possession of the motor vehicle, and inclusion of Buyer's premiums in this contract is optional with Seller. All policies procured by Buyer shall provide that loss, if any, shall be payable to Buyer and to the holder of this contract, as their respective interests may appear and a clause requiring insurer to give the holder 10 days' written notice of cancellation. In the event of the failure of Buyer to insure said motor vehicle or to deliver a fully paid policy to holder at the times and in the manner herein provided, or in the event of cancellation or expiration of any policy during the term of this contract without replacement by Buyer within 10 days, such failure shall constitute an event of default hereunder.

Holder shall have the option, but shall not be required, to procure such insurance for Buyer and to advance the premium therefor. Buyer hereby promises to pay any such premium with finance charge thereon as an additional indebtedness due hereunder. Buyer hereby assigns to holder the proceeds of all insurance on said motor vehicle including unearned premium refunds. In the event of default by Buyer hereunder, holder is authorized to cancel such insurance, receive and receipt for unearned premiums and to endorse any check or draft therefor made payable to Buyer. Any unearned premium received by the holder shall be credited to the final maturing installments of this contract except to the extent applied toward payment for similar insurance protecting the interests of Buyer and the holder, or either of them.

Buyer shall not use or permit said motor vehicle to be used in violation of any law or ordinance, State, Federal or Municipal. Buyer shall not sell, lease, encumber or place said motor vehicle in any other person's possession or remove it from the State of Illinois without the written consent of the holder of this contract. Buyer shall not use said motor vehicle for hire or as a taxi. Buyer shall keep said motor vehicle free from all mechanic's liens, tax liens and all other liens.

The occurrence of any of the following events or conditions shall, at the option of the holder, constitute an event of default hereunder: (a) Default in the payment of any installment of the Total of Payments or any other indebtedness due hereon; or, (b) Failure of Buyer to perform any agreement or warranty made by Buyer herein; or, (c) Loss, theft, substantial damage to, destruction, sale, encumbrance, concealment, removal, attachment, or levy upon the motor vehicle; or, (d) Seizure or forfeiture of said motor vehicle for violation of any law or ordinance, State, Federal, or Municipal; or (e) Institution by or against Buyer or Buyer's business or property of any proceeding under any bankruptcy or insolvency statute or filing of a petition by Buyer for an arrangement or assignment by Buyer for the benefit of creditors, or (f) Reasonable insecurity of the holder; or, (g) Failure of Buyer to keep said motor vehicle fully insured for the entire term of this contract as herein provided.

Upon the occurrence of any event of default, the holder of this contract may declare all installments of the Total of Payments and all other indebtedness secured hereby immediately due and payable, without notice or demand, and thereupon the parties shall have the rights and remedies provided by Article 9 of the Illinois Uniform Commercial Code including, but not by way of limitation, the rights of the holder (a) to take immediate possession of the motor vehicle, with or without judicial process, and for such purpose, to enter upon the premises where it may be located; and (b) to give Buyer reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or other intended disposition thereof is to be made; and (c) to dispose of the motor vehicle at public or private sale in accordance with said notice to Buyer and to buy at a public sale; and (d) to apply the proceeds of sale first to the reasonable expenses of retaking, holding, preparing for sale and selling and to reasonable attorneys' fees and legal expenses incurred by holder, and second, to satisfaction of Buyer's indebtedness hereon, and third, to satisfaction of any subordinate security interest in the motor vehicle if demand therefor is received by holder before disposition of the proceeds, and to account to Buyer for any surplus remaining. Buyer shall be liable for any deficiency unless Buyer at the time of his default has paid 60% or more of the deferred payment price and unless Buyer, at the request of holder and without legal proceedings, surrenders the motor vehicle to the holder in ordinary condition and free from malicious damage. In event of such involuntary surrender after Buyer has paid 60% or more of the deferred payment price, holder shall, within 5 days from receipt of the motor vehicle at his place of business, elect either (1) to retain the motor vehicle and release Buyer from further obligation under this contract, or (2) to return the motor vehicle to Buyer at holder's expense and be limited to an action to recover the balance of Buyer's indebtedness. At any time before disposition of the motor vehicle as provided herein, Buyer may redeem it by paying holder all indebtedness secured hereby as well as expenses reasonably incurred by holder in retaking, holding, preparing the motor vehicle for sale, arranging for the sale and reasonable attorneys' fees and legal expenses. It is expressly agreed by Buyer that the requirements of reasonable notice shall be met if notice is mailed to Buyer at the address of Buyer shown herein not less than 10 days prior to the sale or other disposition. All rights and remedies of the holder, whether provided for in this contract or conferred by law, are cumulative.

Holder is authorized to apply any payment made by Buyer hereon to any other indebtedness of Buyer to holder, whether arising under this contract or otherwise.

Buyer agrees that holder, in retaking said motor vehicle as herein provided, may take possession of personal effects and property found therein and hold the same for delivery to Buyer.

Buyer agrees that if delivery of the motor vehicle is not made at the time of execution of this contract, the identifying number or marks and the due date of the first installment may be inserted by Seller in Seller's counterpart of the contract after it has been signed by Buyer.

If any provision of this contract is held invalid, the invalidity shall not affect the remaining provisions hereof.

ASSIGNMENT

FOR VALUE RECEIVED, Seller hereby sells, assigns and transfers to

(Name of Assignee) (Address of Assignee)

ASSIGNEE, its successors and assigns, all of Seller's right, title and interest in and to the within contract and the motor vehicle described therein. To induce Assignee to purchase said contract, Seller represents and warrants to Assignee (1) that the within contract is valid and genuine and correctly states the terms of the retail insallment transaction between Seller and Buyer; (2) that the motor vehicle described has been delivered to and accepted by the Buyer; (3) that the down payment was paid in full, in cash or in trade, and that no part was loaned to Buyer by Seller; (4) that Seller had good title to and the right to sell said motor vehicle to Buyer and that the motor vehicle is free of all liens, claims and encumbrances; (5) that no notice of any defense or right of action has been received by Seller from Buyer nor has Seller any knowledge of any fact that would impair the validity of the contract; (6) that Seller has the right to sell and assign this contract to Assignee; (7) that all Buyers have legal capacity to contract; (8) that on the date of the contract Seller executed and delivered to each Buyer a completed copy of the contract and to each co-signer a completed copy of the contract and co-signer statement; (9) Seller has complied with all requirements of the Federal Truth in Lending Act and Regulation Z and the Illinois Motor Vehicle Retail Installment Sales Act and the regulations of all governmental agencies; (10) that on the date of the contract, Seller assigned to Buyer the Manufacturer's Statement of Origin or the existing Certificate of Title, as the case may be, issued covering said motor vehicle, procured from Buyer a signed application for a new certificate of title to be issued to Buyer and mailed to Assignee showing correctly the date of the within contract, the name and address of Assignee as holder of the first lien on the motor vehicle and the amount of said lien and caused to be delivered to the Secretary of State of Illinois all of the documents described with the prescribed fee; (11) that the motor vehicle has not been used as a taxi or for hire or for commercial transportation or by law enforcement agencies; and (12) that the Seller believes the Buyer to be of good moral character and that Buyer will not use or permit said vehicle to be used for unlawful purposes. If any of the foregoing representations and warranties is breached, Seller agrees to repurchase the within contract for the unpaid balance and all other indebtedness then due from Buyer thereon, together with reasonable attorney's fees, costs and expenses incurred by Assignee.

Dated: 1-26 19 72

Seller

By: _____
Authorized Signature Title

WITHOUT RECOURSE

Pay to the order of

MERCANTILE NATIONAL BANK OF CHICAGO

Signed _____ Dealer

By _____ Title

FULL RECOURSE

Pay to the order of

MERCANTILE NATIONAL BANK OF CHICAGO

Signed _____ Dealer

By _____ Title

FULL REPURCHASE

Pay to the order of

MERCANTILE NATIONAL BANK OF CHICAGO

without recourse except that undersigned agrees to repurchase from it the motor vehicle described in the within contract if and when the motor vehicle described in the contract executed on the reverse hereof is repossessed by the undersigned on the grounds that the buyer thereof failed to pay any installment of the total of payments when due or failed to perform any agreement or warranty made by buyer in said contract, or that the motor vehicle was lost, stolen, destroyed or damaged, or that any of the representations or warranties made by the undersigned in the contract executed on the reverse hereof or in the application for certificate of title to the motor vehicle described in the contract executed on the reverse hereof were false when made, upon delivery to the undersigned of the motor vehicle, or will pay the holder thereof on demand a sum sufficient to release the undersigned from such obligation to repurchase.

Signed _____ Dealer

By _____ Title

PARTIAL REPURCHASE

Pay to the order of

MERCANTILE NATIONAL BANK OF CHICAGO

without recourse except that if the maker fails to pay any installment of the total of payments when due or fails to perform any agreement or warranty made by maker in the contract executed on the reverse hereof or in the application for certificate of title to the motor vehicle described in the contract executed on the reverse hereof, and if the holder thereof repossesses the motor vehicle described in the contract executed on the reverse hereof, the undersigned will repurchase the unpaid balance of the Total Time Balance, subject to Dealer Agreement.

Signed _____ Dealer

By _____ Title

LIMITED REPURCHASE

If Purchaser fails to pay _____ of _____ payments, _____ and will repurchase the unpaid balance of the Total Time Balance, subject to Dealer Agreement.

Signed _____ Dealer

By _____ Title

Motion to Proceed as a Class Action

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption Omitted in Printing]

MOTION TO PROCEED AS A PLAINTIFFS AND DEFENDANTS CLASS ACTION IN COUNT I

(Filed November 14, 1972)

Now come the plaintiffs by their attorneys, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure and respectfully move this Court to determine:

1. That Count I may properly proceed as a class action as to the plaintiffs pursuant to Rule 23(a) and (b) because the class, consisting of all persons who are debtors under security agreements involving motor vehicles and who have had or may have their automobiles or other motor vehicles repossessed for an alleged default without prior notice or an opportunity to be heard, is so numerous that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class and the representative parties will fairly and adequately protect the interests of the class. In addition, the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; and the parties opposing the class have acted or referred to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

2. That Count I may properly proceed as a class action as to the defendants pursuant to Rule 23(a) and (b) because the class, consisting of all persons who are secured parties within the meaning of Ill. Rev. States. Ch. 26, §9-105(i) and who may, upon their unilateral determination of default by debtor-obligees, seek to recover possession and dispose of the collateral governed by such security agreements pursuant to and under color of Illinois Revised Statutes Ch. 26, §9-503 and 4, is so numerous that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class and the representative parties will fairly and adequately protect the interests of the class.

In addition, the prosecution of separate actions against the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class.

/s/ James O. Latturner
One of the Attorneys for Plaintiffs

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
[Caption Omitted in Printing]

ANSWER OF DEFENDANT MERCANTILE NATIONAL BANK OF CHICAGO TO AMENDED COMPLAINT

(Filed November 20, 1972)

Mercantile National Bank of Chicago ("Mercantile"), defendant herein, by its attorneys, Paul E. Flaherty, Donald J. Parker, Albert E. Jenner, Jr., William B. Davenport and Peter A. Flynn, answers the amended complaint as to plaintiff Alfredo Gonzalez as follows:

COUNT I

1. Mercantile admits that plaintiff Gonzalez seeks to have this Court declare Sections 9-503 and 9-504 of the Uniform Commercial Code, Ill. Rev. Stats. ch. 26, §§9-503 and 9-504 unconstitutional. Mercantile denies that said statutes, or either of them, are unconstitutional on any of the grounds asserted by plaintiff Gonzalez. Mercantile asserts that even if said statutes, or either of them, is unconstitutional, plaintiff Gonzalez has no standing to seek injunctive relief of any kind by reason of matters hereinafter stated.

2. Mercantile admits that plaintiff Gonzalez purports to invoke the jurisdiction of this Court under Title 28 U.S.C. Section 1343(3) and (4), and Title 42 U.S.C. Section 1983. Mercantile denies that plaintiff's purported cause of action is also properly within the ancillary jurisdiction of this Court.

3. Mercantile admits that plaintiff Gonzalez purports to bring this class action on his own behalf and on behalf

of all other persons similarly situated under the stated portion of Rule 23 of the Federal Rules of Civil Procedure. Mercantile denies each and every other allegation of paragraph 3.

4. Mercantile admits that plaintiff Gonzalez purports to sue Mercantile individually and as a representative of all others similarly situated pursuant to the stated portion of Rule 23 of the Federal Rules of Civil Procedure. Mercantile denies each and every other allegation of paragraph 4.

5-12. Mercantile makes no answer to these paragraphs, since these paragraphs do not refer to Mercantile.

13. Mercantile is without information concerning the citizenship and residence of plaintiff Gonzalez and accordingly denies the allegations of paragraph 13.

14. Mercantile admits that it is engaged in the business, among other things, of making loans and financing consumer transactions, with its principal place of business in Chicago, Illinois.

15. Mercantile admits the allegations of paragraph 15.

16. Mercantile admits the allegation of the first sentence of paragraph 16 that the retail installment contract was made on a form supplied by Mercantile but denies the allegation thereof that the retail installment contract was prepared by Mercantile. Mercantile denies the allegation of the second sentence of paragraph 16 that Chicago, Illinois Motor Sales, Inc. had authority to extend credit to plaintiff Gonzalez on behalf of Mercantile but admits the allegation thereof that Chicago, Illinois Motor Sales, Inc. assigned the contract to Mercantile shortly after January 22, 1972.

17. Mercantile admits the allegations of the first sentence of paragraph 17. Mercantile admits the allegation

of the second sentence of paragraph 17 that said insurance was purchased by Mercantile but avers that said insurance was for the benefit of both plaintiff Gonzalez and Mercantile, as the holder of the contract, as their interests might appear.

18. Mercantile admits the allegations of paragraph 18.

19. Mercantile admits that plaintiff Gonzalez paid all but 78 cents of the installment due February 28, 1972, but avers that said payment was not made until March 6, 1972.

20. Mercantile admits the allegations of paragraph 20.

21. Mercantile admits the allegations of paragraph 21.

22. Mercantile denies each and every allegation of paragraph 22. Mercantile avers that on or about May 24, 1972, it learned that the automobile purchased by Gonzalez, as alleged in paragraph 15 of the amended complaint, was then at City Wide Auto Repairs ("City Wide"), 3221 North Pulaski, Chicago, and was advised that it had been at City Wide since on or about April 17, 1972. Mercantile further avers that it obtained possession of said automobile from City Wide on June 7, 1972, upon its payment to City Wide for repairs to said automobile in the amount of $542.68. Mercantile further avers that it was advised by plaintiff Gonzalez on May 30, 1972, that he could not pay the then overdue installments on said automobile ($362.34 for the months of March, April and May), and the excess of the repair costs over the proceeds of the insurance required by the contract (said excess being $220.00). Mercantile further avers that in any event, under the retail installment contract, a copy of which is attached to the amended complaint as Exhibit C, any unearned insurance premium received by the holder shall be credited to the final maturing installments of the contract, with exceptions not here pertinent.

23. Mercantile denies each and every allegation of paragraph 23. For further answer to paragraph 23, Mercantile incorporates herein by reference its answer to paragraph 22 above.

24-48. Mercantile makes no answer to these paragraphs, since these paragraphs do not refer to Mercantile.

49. Mercantile admits that Section 9-503 of the Uniform Commercial Code, Ill. Rev. Stats. ch. 26, Section 9-503, provides in part as alleged in said paragraph. Mercantile alleges that said automobile of plaintiff Gonzalez was repossessed pursuant to the retail installment contract, a copy of which is attached to the amended complaint as Exhibit C.

50. Mercantile admits that Section 9-504 of the Uniform Commercial Code, Ill. Rev. Stats. ch. 26, Section 9-504, provides in part as alleged in said paragraph. Mercantile avers that on June 7, 1972, it sent to plaintiff Gonzalez and to the co-signer of the above-mentioned retail installment contract, by certified mail, return receipt requested, a notice of sale to be held on June 19, 1972. Said notice of sale was in compliance with said Section 9-504. Mercantile further avers that on June 19, 1972, it sold said automobile to Chicago, Illinois Motor Sales, Inc. for the amount owing to Mercantile by Gonzalez on said retail installment contract.

51. Mercantile denies each and every allegation of paragraph 51. Mercantile avers that its actions in repossessing and selling said automobile were taken pursuant to and in accordance with its contract with plaintiff Gonzalez.

52. Mercantile denies each and every allegation of paragraph 52.

53. Mercantile denies each and every allegation of paragraph 53.

FIRST AFFIRMATIVE DEFENSE TO COUNT I

Plaintiff Gonzalez lacks standing to seek injunctive relief under Count I of the Amended Complaint because plaintiff's automobile was sold by Mercantile, pursuant to the retail installment contract with plaintiff, of which a copy is attached to the Amended Complaint as Exhibit C, prior to the filing of the Amended Complaint.

SECOND AFFIRMATIVE DEFENSE TO COUNT I

Count I of the Amended Complaint fails to state a claim on which relief can be granted.

WHEREFORE, Mercantile demands that Count I of the Amended Complaint be dismissed as to it, and that it have judgment for its costs of this action.

COUNT II

1-57. Mercantile makes no answer to the allegations of Count II, since Count II requests no relief against Mercantile other than declaratory relief also sought in Count I. As to the request for such declaratory relief, Mercantile realleges its answer to Count I.

• • •

COUNT IV

1. Mercantile admits that Count IV purports to seek recovery for damages allegedly sustained by plaintiff Gonzalez and to redress the alleged deprivation, allegedly under color of state law, of rights allegedly secured to him by the United States Constitution. Mercantile denies that plaintiff Gonzalez is entitled to any recovery under Count IV, for the reasons hereinafter set forth.

2. Mercantile admits that plaintiff Gonzalez purports to invoke the jurisdiction of this Court under Title 28 U.S.C. Section 1343(3) and (4), and Title 42 U.S.C. Section

1983. Mercantile denies that the matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars ($10,000). Mercantile denies that plaintiff's purported cause of action is also properly within the ancillary jurisdiction of this Court.

3-17. Mercantile incorporates by reference and realleges its answer to paragraphs 13-23 and 49-52 of Count I.

18. Mercantile denies each and every allegation of paragraph 18.

19. Mercantile admits that plaintiff Gonzalez no longer has the use of the automobile described in paragraph 15 of Count I of the Amended Complaint. Mercantile denies each and every other allegation of paragraph 19 of Count IV.

WHEREFORE, Mercantile demands that Count IV of the Amended Complaint be dismissed and that it have judgment for its costs of this action.

• • •

PAUL E. FLAHERTY
DONALD J. PARKER
ALBERT E. JENNER, JR.
WILLIAM B. DAVENPORT
PETER A. FLYNN

By .....

GANN, MCINTOSH, FLAHERTY & PARKER,
135 South LaSalle Street
Chicago, Illinois 60603
CE 6-2251

JENNER & BLOCK
135 South LaSalle Street
Chicago, Illinois 60603
641-6060

Attorneys for Defendant
Mercantile National Bank of Chicago

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
[Caption Omitted in Printing]

MOTION

(Filed December 15, 1972)

NOW COMES the Defendant, John W. Lewis, Secretary of State, State of Illinois, by his attorney, William J. Scott, Attorney General of the State of Illinois, and moves this Court, pursuant to Rule 12(B) of the Federal Rules of Civil Procedure, for the entry of an Order dismissing the Amended Complaint, or in the alternative pursuant to Rule 56 of the Federal Rules of Civil Procedure, for the entry of an Order granting summary judgment in favor of this Defendant.

In support of this Motion, Defendant asserts the following:

1. Plaintiffs have failed to state a claim upon which relief can be granted.

2. Plaintiffs have not alleged a substantial federal question founded directly on federal law.

3. Plaintiff, Hermogenes Mojica, lacks standing to seek either declaratory or injunctive relief under Count II of the Amended Complaint either on his own behalf or on behalf of others because the certificate of title to the 1970 Chevrolet formerly in the possession of this Plaintiff was transferred on April 3, 1972, subsequent to filing of the Complaint but prior to his Motion for Temporary Restraining Order and prior to the filing of the Amended Complaint. The certified copy of the application for Illi-

nois title in the name of Hermogenes Mojica and the application for Illinois title in the name of Automatic Employees Credit Union are attached hereto and incorporated herein by reference as Exhibit "A".

4. Plaintiff, Alberto Gonzalez, lacks standing to seek either declaratory or injunctive relief under Count II of the Amended Complaint either on his own behalf or on behalf of others because the certificate of title to the 1968 Pontiac formerly in the possession of this Plaintiff was transferred on June 16, 1972, prior to the filing of the Amended Complaint. The certified copy of the application for Illinois title in the name of Alfredo Gonzalez and the application for Illinois title in the name of Mercantile National Bank of Chicago are attached hereto and incorporated herein by reference as Exhibit "B".

• • •

7. Count II of the Amended Complaint, as demonstrated by Exhibit "A" through "C" inclusive and by the Affidavit of Fred Kogan referred to in paragraph 6 above, presents a moot question.

WHEREFORE, Defendant John W. Lewis, Secretary of State of the State of Illinois, prays that Count II of the Amended Complaint be dismissed and that he have judgment for his costs of this action.

Respectfully submitted,
/s/ *William J. Scott*
William J. Scott
Attorney General of Illinois
160 North LaSalle Street
Chicago, Illinois 60601

RICHARD C. ROBIN
Assistant Attorney General
Of Counsel
793-2549

APPENDIX B

Certificate Number 80601

STATE OF ILLINOIS
OFFICE OF
THE SECRETARY OF STATE

To all to whom these Presents Shall Come, Greeting:

I, JOHN W. LEWIS, Secretary of State of the State of Illinois do hereby certify that the following and hereto attached is a true photostatic copy of Application for Illinois title in the name of Alfredo Gonzalez, 822 N. Cuyler, Chicago, Illinois covering 1968 Pontiac, s/n 223678U141450 showing lien to Mercantile National Bank, 550 W. Jackson Blvd., Chicago, Illinois in the amount of $1811.70, dated February 22, 1972, which title 1170490138 was issued March 24, 1972. Application for repossession title in the name of Mercantile National Bank of Chicago, 222 South Riverside Plaza, Chicago, Illinois covering 1968 Pontiac, s/n 223678U141450, which title 1171229227 was issued June 16, 1972

the original of which is now on file and a matter of record in this office

In Testimony Whereof, I have set my hand and cause to be affixed the Great Seal of the State of Illinois
Done at the City of Springfield this 11th
day of December AD 1972

John W. Lewis
SECRETARY OF STATE

EXHIBIT "B"

Application for Certificate of Title

USE BLACK BALLPOINT PEN OR TYPEWRITER – DO NOT PRINT RIBBON

TITLE NO. ▷ J0490138 .

VEHICLE IDENTIFICATION NO. 223678U141450

FEB 23 72 7211 0 T R-- 381 200

Make	Year Model	Body Style	No. Cyl.	Horsepower	CCM. Piston Displacement
PONTIAC	68	FIREBIRD	8	48.0	

PRINT FULL NAME Last	First	Middle	Date of Purchase Mo.	Day	Yr.	Purchased NEW / USED
GONZALEZ	ALFREDO		2	22	72	

Legal Address: 822 W CUYLER — State of Last Registration: ILLINOIS

City or Town: CHICAGO — ILL — Zip Code: — County: COOK

WRITTEN SIGNATURE OF OWNER (S): X Alfred Gonzalez — Social Security Number: 508-76-7358

Lien in favor of: MERCANTILE NATIONAL BANK — Date: Mo. 2 Day 22

Street Address: 330 W JACKSON BLVD — Amount: $ 1811.70

City: CHICAGO — State: Ill — Zip Code: 60606

APPLICANT MUST SIGN FULL NAME
FOLLOW THE INSTRUCTIONS ON THE REVERSE SIDE

I (We) acquired the above NEW ☐ USED ☐ on Month — Day — Year 72

From: ILLINOIS MOTOR SALES, INC.

Whose address is: 3[illegible] WESTERN AVE. — CHICAGO, ILLINOIS — 539-2660

THIS VEHICLE OPERATED FOR HIRE ☐ NOT FOR HIRE ☒

1. Have you operated this vehicle in Illinois? NO
2. Are you a licensed dealer? — Dealer's License No. —
3. ☐ I am applying for title Only. ☐ I am applying for title and registration or transfer of registration.

SIGNATURE OF SELLING DEALER: CHICAGO [illegible] SALES INC.

Selling Dealer's License No. 1320 — State Ill — Year 72

Subscribed and sworn to before me this — day of — 19 72

SEAL — NORTH — ILLINOIS — (Notary Public) Cook

(Notary's Address)

SURRENDERED Title Number H 325130 State Ill

APPLICATION FOR CERTIFICATE OF TITLE

FEES
CERTIFICATE OF TITLE WITH REGISTRATION OR TRANSFER ... $2.00
CERTIFICATE OF TITLE ONLY ... $5.00

JOHN W. LEWIS, Secretary of State

TD-3.12 — 14

MAR 24 1972

Application for Certificate of Title

USE BLACK BALLPOINT PEN OR TYPEWRITER WITH DARK RIBBON

NVF

TITLE NO. ▷ J1229227

VEHICLE IDENTIFICATION NO. 223678U141450

JN 16 72 5921 201 — 500

Make	Year Model	Body Style	No. Cyl.	Horsepower	CCM. Piston Displacement
Pontiac	1968	Firebird	8	48.0	

PRINT FULL NAME Last	First	Middle	Date of Purchase Mo.	Day	Yr.	Purchased NEW / USED
Mercantile National Bank of Chgo			6	7	72	X

Legal Address: 222 South Riverside Plaza — State of Last Registration: Illinois

City or Town: Chicago — ILL — Zip Code: 60606 — County: Cook

WRITTEN SIGNATURE OF OWNER (S): Michael W. Nelsen — Social Security Number:

Mercantile National Bank of Chgo c/o

Lien in favor of: none

Street Address:

City: — State: — Zip Code:

RELEASED

APPLICANT MUST SIGN FULL NAME
FOLLOW THE INSTRUCTIONS ON THE REVERSE SIDE

I (We) acquired the above NEW ☐ USED ☒ on Month June — Day 7 — Year 1972

From: Alfredo Gonzalez

Whose address is: 822 W. Cuyler — Chgo. — Ill.

THIS VEHICLE OPERATED FOR HIRE ☐ NOT FOR HIRE ☒

1. Have you operated this vehicle in Illinois? no
2. Are you a licensed dealer? no — Dealer's License No. none
3. ☐ I am applying for title Only. ☐ I am applying for title and registration or transfer of registration.

SIGNATURE OF SELLING DEALER: none

RECEIVED JUN 16 1972 JUN 1 RECE' TITL

Selling Dealer's License No. — State — Year —

Subscribed and sworn to before me this 14 day of June 19 72

SEAL — SPECIAL — JUN 16 — (Notary Public) — (Notary's Address)

SURRENDERED Title Number IO490138 State Illinois

TITLES

APPLICATION FOR CERTIFICATE OF TITLE

FEES
CERTIFICATE OF TITLE WITH REGISTRATION OR TRANSFER ... $2.00
CERTIFICATE OF TITLE ONLY ... $5.00

JOHN W. LEWIS, Secretary of State

TD-3.12 — ASSOCIATION SERVICES — 14

Affidavit

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
[Caption Omitted in Printing]

JOINT MEMORANDUM OF ALL CREDITOR DEFENDANTS IN OPPOSITION TO MOTION TO PROCEED AS A PLAINTIFFS' AND DEFENDANTS' CLASS ACTION IN COUNT I

(Filed January 2, 1973)

• • •

AFFIDAVIT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

Affiant Patrick Kalensky, being first duly sworn, on oath deposes and says:

1. Affiant is the President of Chicago Illinois Motor Sales, Inc., of 3939 North Western Avenue, Chicago, Illinois.

2. On August 15, 1972, Chicago Illinois Motor Sales, Inc. sold to Henry L. Davis, 2701 South Dearborn Street, Chicago, Illinois for $1570.00, including tax, a 1968 Pontiac bearing identification number 223678U141450. That automobile was repossessed from Alfredo Gonzalez on June 7, 1972, by the Mercantile National Bank of Chicago, and was transferred to Chicago Illinois Motor Sales, Inc. by said Bank on June 19, 1972.

/s/ Patrick Kalensky

Memorandum Opinion and Judgment Order

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Hermogenes Mojica, Alberto Gonzalez, James Barnett and Compton C. Banks, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

Automatic Employees Credit Union, Mercantile National Bank Of Chicago, Car Credit Corp., Overland Bond & Investment Corp. and Wood Acceptance Corp., individually and as representatives of all others similarly situated, and John W. Lewis, Secretary of State,

Defendants.

NO. 72 C 686

MEMORANDUM OPINION AND JUDGMENT ORDER

(Entered August 16, 1973)
Printed in Jurisdictional Statement as
Appendix A at page 1a.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
[Caption Omitted in Printing]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES
(Rec'd October 4, 1973)

Printed in Jurisdictional Statement as
Appendix B at page 12a.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
[Caption Omitted in Printing]

STIPULATION
(Filed December 28, 1973)

Now come a plaintiff, Alfredo Gonzalez, and a defendant, Mercantile National Bank, by and through their respective attorneys and stipulate that if plaintiff Gonzalez shall prevail on his damage claim against defendant Mercantile (presently Count IV of the Amended Com-

plaint) the amount of damages awarded shall not exceed $750.00.

/s/ James O. Latturner
Attorney for plaintiff Gonzalez
/s/ William B. Davenport
Attorney for defendant Mercantile

WILLIAM B. DAVENPORT
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
PAUL E. FLAHERTY
GANN, MCINTOSH, FLAHERTY & PARKER
135 S. LaSalle St.
Chicago, Illinois 60603
Attorneys for defendant Mercantile

JAMES O. LATTURNER
ALLEN R. KAMP
4564 N. Broadway
Chicago, Illinois 60640
769-1015
Attorneys for Plaintiff Gonzalez

SUPREME COURT OF THE UNITED STATES
No. 73-858

Alfredo Gonzalez, individually and on behalf of all others similarly situated,

Appellant,

v.

Automatic Employees Credit Union et al.

APPEAL from the United States District Court for the Northern District of Illinois.

The statement of jurisdiction in this cause having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits.

February 25, 1974